



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on January 13, 2018, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on January 18, 2018, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

## Background and Evidence

The landlord submitted the following evidentiary material:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant "BH", indicating a monthly rent of \$1,150.00 due on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 03, 2018, which the landlord states was served to the tenants on January 03, 2018, for \$1,600.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 03, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,600.00 for outstanding rent, comprised of the balance of unpaid rent due by January 01, 2018;
- A copy of a hand-written document which states that the landlord wanted to increase the monthly rent to \$1,300.00;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit at 4:00 PM on January 03, 2018. The Proof of Service establishes that the service was witnessed by "KC" and a signature for "KC" is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

## Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on January 06, 2018, three days after its posting.

Although a second individual, identified as “AR”, is listed as a respondent tenant on the application, neither the name nor signature for “AR” appears on the tenancy agreement to demonstrate that “AR” entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord’s application against the tenant “BH” only.

On the Direct Request worksheet provided by the landlord, and on the Notice for Unpaid Rent, the landlord calculates the unpaid rent owing as of January 01, 2018 based on monthly rent owed in the amount of \$1,600.00. However, the landlord has not provided any evidentiary material to clearly demonstrate whether the monthly rent owed under the tenancy was raised from \$1,150.00, as established in the tenancy agreement, to the amount of \$1,600.00 indicated on the Direct Request worksheet and on the Notice provided to the tenant. The landlord has not provided any documentary evidence to clarify why the calculation of the monthly rent for January 2018 is depicted to be \$1,600.00 instead of \$1,150.00 as stated in the tenancy agreement.

The landlord has not provided any evidentiary material, such as a Notice of Rent Increase forms to demonstrate that the monthly rent was increased, nor has the landlord provided any evidence to illustrate that the parties amended the terms of the tenancy agreement to agree upon a new monthly rent amount, or that the parties mutually agreed in writing on a new monthly rent amount. Therefore, in determining the monthly rent amount agreed upon by the parties, and in calculating the balance of unpaid rent owed by the tenant as of January 01, 2018, I will rely upon the information provided in the tenancy agreement, which establishes that the monthly rent amount to be paid by the tenant is \$1,150.00.

The landlord provided a copy of a hand-written document which states that she wishes to increase the monthly rent to \$1,300.00 from a previously determined amount, however, the document provided by the landlord is not clear and I cannot determine the previous amount indicated on the document. I further find that the document would not suffice to demonstrate that the parties mutually agreed to increase the monthly rent, as the individual listed as the tenant endorsing the document is not the same individual, “BH”, identified as being the tenant on the tenancy agreement. Therefore, I cannot determine that the tenant “BH” entered into a mutual agreement with the landlord to increase the monthly rent.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,150.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,150.00, comprised of the balance of unpaid rent owed by January 01, 2018.

I accept the landlord’s undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, January 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,150.00 for unpaid rent owed by January 01, 2018, as of January 12, 2018, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,250.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 19, 2018

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Residential Tenancy Branch